

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Migdalia Avedana, *individually and on behalf*
of others similarly situated,

Plaintiff,

v.

Casa Ofelia's Bakery LLC; Casa Ofelia's Corp
doing business as Casa Ofelia Bakery; Martin
Rojas; and Sussy Gricelda Agurcia,

Defendants.

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DIANE GUJARATI, United States District Judge:

On May 16, 2020, Plaintiff Migdalia Avedana commenced this action against Defendants Casa Ofelia's Bakery LLC, Casa Ofelia's Corp, Martin Rojas, and Sussy Gricelda Agurcia (collectively, "Defendants"), alleging violations of the Fair Labor Standards Act and the New York Labor Law. *See generally* Complaint, ECF No. 1. Defendants were served, *see* Executed Summonses, ECF Nos. 7-10, but did not appear in the action, and the Clerk of Court entered default against them on October 14, 2020, *see* Entry of Default, ECF No. 12.

On January 25, 2021, Plaintiff moved for default judgment against Defendants under Federal Rule of Civil Procedure 55(b)(2) and Local Rule 55.2(b). *See* Motion for Default Judgment (the "Motion"), ECF No. 13; Memorandum of Law in Support of Plaintiff's Application for Default Judgment, ECF No. 13-1. I referred the Motion to Magistrate Judge A. Kathleen Tomlinson for a Report and Recommendation ("R&R"). *See* February 3, 2021 Order.

On August 19, 2021, Judge Tomlinson issued a thorough and well-reasoned R&R recommending that I grant Plaintiff's Motion in part, to the extent set forth in Judge Tomlinson's

R&R. *See* Report and Recommendation, ECF No. 27. No objection has been filed to the R&R, and the time for doing so has passed. *See id.* at 39.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). To accept those portions of an R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quotation marks omitted). Clear error will be found only when, upon review of the entire record, the Court is left with “the definite and firm conviction that a mistake has been committed.” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (quotation marks omitted).

I have reviewed Judge Tomlinson’s R&R, and, having found no clear error, adopt the R&R in its entirety.

Therefore, Plaintiff’s Motion for Default Judgment is granted to the extent set forth in Judge Tomlinson’s R&R, and Plaintiff is awarded the following damages: (1) \$42,823 in unpaid overtime compensation; (2) \$42,823 in liquidated damages; (3) pre-judgment interest on \$42,823, running from June 6, 2019 until the entry of judgment at the rate of 9% per annum to be calculated by the Clerk of the Court; (4) \$10,000 for wage and notice violations; (5) \$4,816.00 in attorney’s fees; and (6) \$550.00 in costs.

The Clerk of Court is directed to enter judgment accordingly.

Plaintiff is directed to serve a copy of this Order on Defendants.

SO ORDERED.

/s/ Diane Gujarati

DIANE GUJARATI

United States District Judge

Dated: September 17, 2021
Brooklyn, New York